

Company (“Everest”) has failed to meet its burden of proving that this Court has subject matter jurisdiction over this matter.

Everest asserts that this Court has subject matter jurisdiction over its Petition for Appointment of an Umpire to Appraisal Panel (the “Petition”) by virtue of diversity jurisdiction, in that there is complete diversity between the parties and the amount in controversy exceeds \$75,000 in satisfaction of the requirements of 28 U.S.C. § 1332(a)(1). See Petition, ¶ 4. Such facts are not disputed by Farmington. However, 28 U.S.C. 1332(a)(1) states that “[t]he district courts shall have original jurisdiction of all **civil actions** where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between citizens of different states.” 28 U.S.C. 1332(a)(1) (*emphasis added*). Farmington asserts that Everest has not brought forth a “civil action” as that term is used within the Federal Rules of Civil Procedure. Rule 3 of the Federal Rules of Civil Procedure states that “[a] civil action is commenced by filing a complaint with the court.” Fed. R. Civ. Proc., Rule 3. As Everest has not filed a “complaint,” it has not initiated a “civil action” under Rule 3. See Fed. R. Civ. Proc., Rule 3. As there is no “civil action” under Rule 3, Everest has failed to prove its burden that there exists diversity jurisdiction under 28 U.S.C. 1332, as Everest asserts. See Petition, ¶ 4.

In conclusion, because there is no complaint on file for this matter, a civil action under Rule 3 of the Federal Rules of Civil Procedure has not been initiated, and as such, there does not exist diversity jurisdiction as set forth by 28 U.S.C 1332(a). For that reason, this Court should dismiss Everest's Petition as contemplated by Rule 12(b)(1) of the Federal Rules of Civil Procedure.

II.

RESPONSE TO EVEREST'S PETITION

Subject to the Court's ruling on Farmington's above Motion to Dismiss, Farmington responds to Everest's request to appoint one of the potential umpires it lists in its Petition by requesting that the Court consider appointing any of Farmington's nominated potential neutral umpires to the appraisal panel made the subject of this matter. Farmington's requested candidates for a neutral umpire are as follows:

- a. Blake Duncan – Previous owner of Allcat Claims and Duncan Claims, and current owner of Premiere Rebuilders;
- b. Gary Boyd – Please see CV attached as Exhibit "A"; and
- c. Bryan Scanlon.

Each of these individuals is competent and impartial, and would serve well as a neutral umpire in this matter. Each of these individuals has been appointed as an umpire in other appraisal panels, and has the subject matter expertise necessary to be an effective neutral umpire. None of the above-named individuals are employed by Farmington or have any pecuniary interest in the outcome of the appraisal. Accordingly, appointing one of these individuals assures an absence of bias in favor of or against either party such that confidence can be imparted to the appraisal process.

WHEREFORE PREMISES CONSIDERED, Farmington requests that this Court grant its Motion to Dismiss, or in the alternative, appoint one of the qualified professional named above to act as the neutral umpire in the appraisal made subject of this matter.

Respectfully submitted,

CAGLE CARPENTER HAZLEWOOD

/s/ Adam Pugh

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ATTORNEYS FOR FARMINTON

COMMONS HOMEOWNERS

ASSOCIATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered by the method indicated in accordance with the Texas Rules of Civil Procedure on this the 23rd day of February, 2018, to the following:

Andrew C. Nelson

One Riverway, Suite 2200

Houston, Texas 77056

Via Email

nelson@wrightlclose.com

/s/ Adam Pugh

ADAM PUGH